

UNITED STATES DISTRICT COURT

for the
Southern District of Ohio

United States of America

v.

Michael Kirkwood

Defendant(s)

Case No.

3:16mj 155

MICHAEL R. MERZ

CRIMINAL COMPLAINT

I, the complainant in this case, state that the following is true to the best of my knowledge and belief.

On or about the date(s) of January 17, 2016 - June 8, 2016 in the county of Montgomery in the
Southern District of Ohio, the defendant(s) violated:

Code Section

18 U.S.C. 2422(b)

Offense Description

Coercion and enticement

This criminal complaint is based on these facts:

See attached affidavit

☒ Continued on the attached sheet.

Donald P. Moesle

Complainant's signature

Donald P. Moesle, Special Agent, HSI

Printed name and title

Sworn to before me and signed in my presence.

Date:

June 10, 2016

City and state:

Dayton, Ohio

Michael R. Merz

Judge's signature

Michael R. Merz, United States Magistrate Judge

Printed name and title

AFFIDAVIT

I, Donald P. Moesle Jr., (hereinafter referred to as your "Affiant") after being duly sworn, depose and state:

1. I am a Special Agent with Department of Homeland Security, Immigration and Customs Enforcement (ICE), Homeland Security Investigations (HSI), assigned to the Resident Agent in Charge in Cincinnati, Ohio, and have been a Special Agent since 2003. As part of my normal duties and responsibilities, I routinely investigate federal criminal violations relating to child pornography and child exploitation/human trafficking in violation of 18 U.S.C. §§ 2251-2260A, 2422 and 1590-1594. I have received specific training in the areas of child pornography, child exploitation, and human trafficking. I have been in federal law enforcement since May 1996, previously serving as United States Border Patrol Agent and as an Immigration Inspector for U.S. Immigration and Naturalization Service/Customs and Border Protection. Affiant is a graduate of the ICE Special Agent Training Program and the Criminal Investigator Training Program; both of which are taught at the Federal Law Enforcement Training Center located in Glynco, Georgia. I have also attended training in computer based child exploitation from the National White Collar Crime Center and from HSI'S Cyber Crimes Center. I am a graduate of Ohio University located in Athens, Ohio where I received a Bachelor of Arts Degree in Sociology, specializing in Criminology

2. The facts in this affidavit come from my personal observations, my training and experience, and information obtained from other agents and witnesses. This affidavit is intended to show merely that there is sufficient probable cause for the requested warrant and does not set forth all of my knowledge about this matter. Based on the facts as set forth in this affidavit, there is probable cause to believe that a violation of 18 U.S.C. § 2244(b), that being "Coercion and

enticement” has been committed by Michael Kirkwood (“**KIRKWOOD**”). Consequently, Affiant respectfully requests that an arrest warrant be issued for **KIRKWOOD**.

PROBABLE CAUSE

3. 18 U.S.C. § 2422(b) states in relevant part: “Whoever, using the mail or any facility or means of interstate or foreign commerce knowingly persuades, induces, entices or coerces any individual who has not attained the age of 18 years, to engage in prostitution or any sexual activity for which any person can be charged with a criminal offense, or attempts to do so, shall be fined under this title and imprisoned not less than 10 years or for life.”

4. On or about January 26, 2016, Montgomery County Sheriff’s Office (MCSO) Detective Melanie Phelps-Powers (Phelps-Powers), received a lead from the Cleveland, Ohio Internet Crimes Against Children (ICAC) Task Force that a 13 year old female (MINOR FEMALE) was receiving messages via Facebook from an adult male, identified as **KIRKWOOD**. The complaint was made by MINOR FEMALE’s father, and he alleged that the messages were inappropriate. MINOR FEMALE initially communicated with **KIRKWOOD** while at her father’s residence, which is located in Kettering, Ohio, which is located within the Southern District of Ohio. **KIRKWOOD’S** Facebook account used to send the aforementioned messages is known as “mike.kirkwood.90”. **KIRKWOOD** is presently 59 years old. He was born on April 1, 1957. **KIRKWOOD** is a distant relative of MINOR FEMALE.

5. Phelps-Powers reviewed copies of the Facebook messages provided by the ICAC, which appeared to contain inappropriate sexually-related correspondence between **KIRKWOOD** and MINOR FEMALE. It appears that **KIRKWOOD** started communicating with MINOR FEMALE on or about January 17, 2016. Based on a review of the Facebook messages, it appears that **KIRKWOOD** initiated contact with MINOR FEMALE. MINOR

FEMALE's father subsequently granted Phelps-Powers consent to assume the online identity of MINOR FEMALE (his minor daughter). On or about March 3, 2016, Phelps-Powers assumed MINOR FEMALE's identity and began chatting with **KIRKWOOD** via Facebook messenger or texting.

6. Your Affiant has reviewed an excerpt of the electronic messages (Facebook messages and/or texts) exchanged between **KIRKWOOD** and MINOR FEMALE and **KIRKWOOD** and Phelps-Powers (acting as MINOR FEMALE in an undercover capacity). Based on my training and experience, **KIRKWOOD** was beginning to "groom" MINOR FEMALE in order to engage in a sexual relationship with her. "Grooming" is a process that individuals (in particular sexual predators) use to incrementally gain the trust of and access to a child. As the grooming process continues, these individuals will attempt to isolate the child from friends and family and create the need to keep the relationship a secret. Based on my training and experience, the sexual predator is able to take advantage of this isolation and secrecy in order to coerce the child into a sexual relationship based upon the emotional connection that has been created. **KIRKWOOD** used Facebook to communicate with and "groom" MINOR FEMALE.

7. Set forth below are excerpts of the initial electronic correspondence (Facebook messages) between **KIRKWOOD** and MINOR FEMALE that occurred on or about January 17, 2016 ("K" = **KIRKWOOD** and "MF" = MINOR FEMALE) (this correspondence occurred over several exchanges):

K: Ca [sic] you talk for a while
MF: Sure
K: Don't think anyone else should see us talking
MF: Ok

* * *

K: This is just between me and you right

MF: Yea sure

* * *

K: I can't believe you are 13, you look older

* * *

K: Well it is always fun to be bad sometimes

MF: Yea sometimes

K: Fun bad

MF: Yea I know

* * *

K: Do men interest you

MF: Not really I'm not interested in dating anyone

K: Not talking about dating

MF: ?

K: You curious

MF: Well I don't know what you mean by that

K: Nevermind just being stupid lol

MF: OK

K: Just about their bodies, Did I make you mad, OK, You there

8. The following are excerpts from electronic correspondence (Facebook messages) between Phelps-Powers (acting as MINOR FEMALE in an undercover capacity (referenced in the chats below as "UC") and using SS's Facebook account) and **KIRKWOOD** that occurred on or about March 16, 2016:

K: Don't be afraid to tell me about your body

UC: I'm not, just not much to tell

K: Tell me about it

* * *

K: I bet your body has changed

UC: I got taller

K: Am I imbarressing [sic] you

UC: Not really

K: You said I could ask you anything

UC: Yes

K: Bra size

UC: Just the size?
K: Yes and whatever else you want to tell me
UC: I guess medium
K: cup size
UC: B, lol

* * *

K: Ok would you want me to take you shopping
UC: Maybe
K: What kind of clothes
UC: Jeans, shirts
K: Is that it
UC: Idk, (Smiley face sticker), a car, lol
K: Lingerie
UC: I don't have any of that
K: Would you like some
UC: Maybe

9. On or about March 16, 2016, **KIRKWOOD** also offered via Facebook messenger to buy "MINOR FEMALE" (in actuality chatting with Phelps-Powers who was acting in an undercover capacity using MINOR FEMALE's Facebook account) with "teddy" and "panties." On that same day, **KIRKWOOD** asked via Facebook messenger whether "MINOR FEMALE" if she would model them.

10. On or about May 25, 2016, **KIRKWOOD** and "MINOR FEMALE" (Phelps-Powers acting in an undercover capacity using MINOR FEMALE's Facebook account) exchanged messages via Facebook messenger, which is excerpted below:

K: Yes sounds great, Remember that you are going to be older
UC: So what do older girls do
K: Oh I can't tell you lol
UC: Yes you can
K: Oh I don't know if I can
UC: Why not
K: It's adult things
UC: I'm not a kid
K: very true
UC: So tell me
K: Sometimes they make love

UC: I know that, I told you I'm not a kid
 K: That's what adults do sometimes, Believe me [name redacted] I know that you are not a kid
 UC: Ok
 K: Your more of an adult then some adults
 UC: Thanks
 K: I just want you to be an adult when you are with me
 UC: I can be
 K: Ok sounds great, you won't be scared will you
 UC: About being an adult around you?
 K: Yes
 UC: No, why
 K: Just asking

11. The following are excerpts from electronic correspondence (Facebook messages) between Phelps-Powers (acting as MINOR FEMALE in an undercover capacity and using MINOR FEMALE's Facebook account) and **KIRKWOOD** that occurred on or about May 29, 2016:

K: I will teach you some things
 UC: Like what
 K: Some adult things
 UC: I'm not a kid
 K: I know I said some adult things, I am going to treat you like a grown woman
 UC: Good
 K: But no sex
 UC: ok
 K: You don't want that anyway
 UC: Why
 K: Oh you would like it
 UC: Idk
 K: If we did it and someone would find out I would be in big trouble
 UC: I won't tell
 K: Ever?
 UC: No, Can I ask you a question
 K: Well whatever you want to do we can, sure
 UC: Will it hurt
 K: It may hurt at first, But it will so good
 UC: I don't want it to hurt
 K: Well because it is your first time it will but it will stop hurting in about a minute, you can ask me anything
 UC: Ok, cool

K: Is that something that you may [sic] want to try
UC: Maybe
K: Ok, I can always use my fingers first
UC: Will that hurt?
K: No
UC: Ok

* * *

K: Would you be able to take a pic of you in panties and bra
UC: I'll try
K: Promise
UC: Yes

12. On or about June 7, 2016, **KIRKWOOD** again chatted with who he believed was MINOR FEMALE (in actuality Phelps-Powers acting as MINOR FEMALE in an undercover capacity). During the conversation, **KIRKWOOD** and Phelps-Powers agreed that he would meet MINOR FEMALE at the mall, and **KIRKWOOD** chose Victoria's Secret as the exact meeting place. After confirming that MINOR FEMALE's mother would not know about MINOR FEMALE going to the mall, **KIRKWOOD** expressed his desire for MINOR FEMALE to "model" for him in his truck and to engage in other activity:

K: We can do whatever you want to
UC: Cool
K: What do you have in mind
UC: You said we could make out
K: You want to
UC: I think so
K: Ok we can do that
UC: OK, cool
K: What would you like to try
UC: Idk
K: Some adult things?
UC: Yes
K: So if we do this no one will ever know right
UC: No way, I'll get in so much trouble
K: I'm will be too

* * *

K: What is something we can't do
UC: What?
K: No its am asking you what is something you don't me to do
UC: Idk, Can we just see how things make me feel
K: Yes anything
UC: U get kinda nervous but excited, Does that make sense
K: Yes you are excited about making out but you are sill nervous
UC: Yes
K: Ok i understand
UC: Good
K: No sex
UC: Ok
K: I will make you feel good

It was agreed that their meeting would take place at 2:00 pm the next day, June 8, 2016. Near the end of their chat, **KIRKWOOD** asked if he could keep the panties she would be wearing to their meeting.


13. On June 8, 2016, at approximately 2:00 pm, **KIRKWOOD** arrived at the Dayton Mall and entered through Entrance #2. This is the closest entrance to the Victoria's Secret store in the Dayton Mall. Shortly after entering the Dayton Mall, **KIRKWOOD** was arrested.

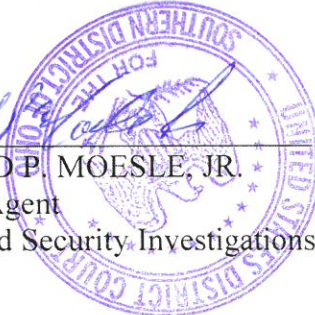
14. Following his arrest, **KIRKWOOD** agreed to be interviewed by law enforcement. During the interview, **KIRKWOOD** stated, among other things, that: (1) he chatted online with MINOR FEMALE and approximately 20 other female girls around the age of 13; (2) he had not met with any of the other girls; and (3) he received and possessed child pornography on his home computer. During a search of **KIRKWOOD**'s residence in Lebanon, Ohio on or about June 8 and 9, 2016, investigators located four (4) panties consistent with that worn by a female youth. The underwear was located in a pocket of a golf bag in the garage, and they appeared to have evidence of soiling.

15. Based on the foregoing and my training and experience, your Affiant believes that there is probable cause to believe that **KIRKWOOD** intended to engage in sexual activity with

MINOR FEMALE that would violate Ohio Revised Code § 2907.04 and Ohio Revised Code § 2907.07. Pursuant to Ohio Revised Code § 2907.07, it is unlawful for an adult over the age of 18, and being 4 or more years older than the other person when that person is 13 years or older but less than 16 years of age, to have sexual contact (that being the touching of an erogenous zone of another, including without limitation the thigh, genitals, buttock, pubic region, or breast for purpose of sexual arousal or gratification of either person) with that minor. Further, it is a violation of Ohio Revised Code § 2907.04 for an adult over the age of 18, and 4 or more years older than the other person when that person is 13 years or older but less than 16 years of age and the adult knows the age of the other person or is reckless in that regard, to engage in sexual conduct (that being vaginal intercourse between a male and female, anal intercourse, fellatio, cunnilingus between persons regardless of sex; and without privilege to do so the insertion, however slight of any part of the body or any instrument or apparatus, or other object into the vaginal or anal opening of another) with that minor.

16. Based on the above facts, Affiant asserts that there is probable cause to believe that **KIRKWOOD** has violated 18 U.S.C. § 2422(b).


DONALD P. MOESLE, JR.
Special Agent
Homeland Security Investigations



Sworn to before me this 10th day of June, 2016.


HONORABLE MICHAEL R. MERZ
United States Magistrate Judge